UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 June 2009</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,3,5,8,10,11,14 and 18</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1, 3, 5, 8, 10, 11, 14 and 18</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date <u>4/13/09 & 7/7/09.</u>

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1, 3, 5, 8, 10, 11, 14 and 18 have been examined and are pending.

2.   Claim amendments with arguments are not persuasive, hence this Office action
is made FINAL.

Information Disclosure Statement

3.   The information disclosure statements (IDS) submitted on 4/13/2009 and on
7/7/2009 were filed after the mailing date of the non-final Office action on 12/8/2008.
The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the
information disclosure statements are being considered by the examiner.

Response to Arguments

4.   Applicant's amendments with arguments, see Page 9, filed 6/4/2009, with
respect to the objection of claims 1, 8, 10 and 11 have been fully considered and are
persuasive. The objection of claims 1, 8, 10 and 11 has been withdrawn.

5.   Applicant's amendments with arguments filed 6/2/2009 with respect to prior art
rejections have been fully considered but they are not persuasive. The amended
limitations are disclosed in the prior art of record used to reject the claims in the
previous Office action. Specifically "wherein the data restoring unit receives an initial
state restore request from the user to restore data of an initial state of the data backup
device, the data restoring unit requests the server to transmit a difference between the
backup data and an initial state master data both stored in the server, and receives the

difference from the server to restore the difference to the storage unit" is disclosed in

Gold et al. at Column 7, lines 12-35. Therefore the argument is unpersuasive.

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

7.   Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

8.   Claim 1 recites the limitation "the data backup device" in the last limitation.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

9.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

10.   Claims 1, 3, 5, 8, 10, 11, 14 and 18 are rejected under 35 U.S.C. 103(a) as being

unpatentable over US 6,611,923 B1 (Mutalik et al.), and further in view of US 6,785,786

B1 (Gold et al.) and US 6,398,105 B2 (Ramberg et al.).

As to Claims 1, 8, 10 and 11, Mutalik et al. discloses an invention substantially as

claimed, including a data backup device connected to a server via a network, a data

backup method, a computer readable recording medium that stores a computer

program including computer executable instructions which when executed by a

computer, cause the computer to perform, and a data backup system comprising a

client and a server connected to each other via a network respectively, comprising:

 a storage unit that stores data (Mutalik et al. – Figure 1, elements 13, 14, 12 are

all storage units);

 a backup controller that

 transmits the data to the server through the network to store the data as backup

data in the server (Mutalik et al. – Column 2, line 48 to Column 3, line 10 disclose the

backup operation including transmitting data through the network to the server to store

data as backup data and the specification of data being transmitted, the backup server

being the backup controller and the mass storage subsystem being the server);

 for each of the data stored in the storage unit, wherein the backup controller

specifies each of the data identified when transmitting each of the data to the server and

each of the data transmitted to the server is stored in the server [...] (Mutalik et al. –

Column 2, line 48 to Column 3, line 10 disclose the backup operation including

transmitting data through the network to the server to store data as backup data and the

specification of data being transmitted, the backup server being the backup device and

the mass storage subsystem being the server); and

 a data restoring unit that

receives a request from a user (Mutalik et al. – Column 3, lines 4-19 disclose the restore request from a user, the determination of data to be restored, and restoration of the determined data),

determines backup data to be obtained from the backup data stored in the server, based on the request, requests the server to transmit the backup data, receives the backup data from the server, and restores to the storage unit the backup data (Mutalik et al. – Column 3, lines 4-19 disclose the restore request from a user, the determination of data to be restored, and restoration of the determined data).

Mutalik et al. do not disclose, but Gold et al. disclose an invention substantially as claimed, including

a usable band detector that detects a width of a usable band from an available band of the network, the usable band currently not being used (Gold et al. – Column 5, lines 6-15 disclose the detection of bandwidth to determine if a sufficient amount of usable bandwidth is available); and

determines whether the width of the usable band is wider than a predetermined width (Gold et al. – Column 5, lines 6-15 disclose the detection of bandwidth by the backup apparatus to determine if a sufficient amount of usable bandwidth is available); and

when the usable band is determined to be wider than the predetermined width (Gold et al. – Column 5, lines 6-15 disclose the backup will be allowed to start if bandwidth is sufficient); and

wherein the data restoring unit receives an initial state restore request from the user to restore data of an initial state of the data backup device, the data restoring unit requests the server to transmit a difference between the backup data and an initial state master data both stored in the server, and receives the difference from the server to restore the difference to the storage unit (Gold et al. disclose the FDA process wherein the data restoring unit receives user store requests and transmits the difference of what has been modified from the master - Column 7, lines 12-35; Gold et al. – Column 8, lines 54-57 discloses a user request to restore an earlier version of a file; Gold et al. – Column 8, lines 59-64 disclose that the difference is requested, identified and sent to the client storage; line 21 discloses that the different versions reside on the backup apparatus; Gold et al. – Column 8, lines 59-64 disclose that the difference is requested, identified and sent to the client storage).

Mutalik et al. do not disclose, but Ramberg et al. disclose an invention substantially as claimed, including

a data identifying unit that identifies a type of data selected from a plurality of types (Ramberg et al. – Column 12, lines 2-3 and lines 36-39 disclose the data type identifying unit);

according to the type (Ramberg et al. – Column 11, lines 29-51 disclose backup and restoration according to data type);

a type of (Ramberg et al. – Column 11, lines 29-51 disclose backup and restoration according to data type);

the type of backup data being one of the types (Ramberg et al. – Column 11, lines 29-51 disclose backup and restoration according to data type);

of the type determined (Ramberg et al. – Column 12, lines 2-3 and lines 36-39 disclose the data type identifying unit);

of the type transmitted (Ramberg et al. – Column 11, lines 29-51 disclose backup and restoration according to data type; Column 12, line 20 discloses the transmission); and

of the type received (Ramberg et al. – Column 11, lines 29-51 disclose backup and restoration according to data type).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a usable band detector that detects a width of a usable band from an available band of the network, the usable band currently not being used; determines whether the width of the usable band is wider than a predetermined width, and when the usable band is determined to be wider than the predetermined width; and wherein the data restoring unit receives an initial state restore request from the user to restore data of an initial state of the data backup device, the data restoring unit requests the server to transmit a difference between the backup data and an initial state master data both stored in the server, and receives the difference from the server to restore the difference to the storage unit taught by Gold et al., with the data restoration system taught by Mutalik et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to allow the client to powersave or disconnect and continue backup when resources are available (Gold et al. – Column 5, lines 18-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine data type characterization, determination, storage by type and transmission/receipt systems and methods by type taught by Ramberg et al., with the storage backup and restoration units taught by Mutalik et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to match client criteriaand determine if additional processing is needed based on data type before sending to the next party (Ramberg et al. – Column 2, lines 42-67).

As to Claims 3 and 14, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup device and data backup system according to claims 1 and 11 respectively,

wherein the types are user data, operating system setting data, application information, and other data (Ramberg et al. - Abstract discloses user, voice recognition system data and barcode application data; Gold et al. - Column 6, lines 35-40 disclose the backup of operating system data).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 5, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup device according to claim 1, further comprising:

a distribution specifying unit that receives distribution information from a user and transmits the distribution information to the server (Ramberg et al. – Claim 28 discloses the ADC device; Abstract discloses user input),

wherein the distribution information specifies distributed data to be distributed from the backup data stored in the server to another client separate from the data backup device via the network (Ramberg et al. – Claim 28 discloses the router which sends backed up data to another ADC device; Column 11, lines 47-52 disclose the data being backed up on the server until distribution is feasible),

a time at which the distributed data is to be distributed (Ramberg et al. – Claim 28 discloses only when client applications should receive the data), and

a destination to which the distributed data is to be distributed (Ramberg et al. – Claim 28 discloses the router which sends backed up data to another ADC device).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 18, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup system according to claim 11, wherein

the client further comprises a distribution specifying unit that receives distribution information from a user and transmits the distribution information to the server, the distribution information that specifies distributed data to be distributed from the backup data stored in the server to another client separate from the client via the network, a time at which the distributed data is to be distributed, and a destination to which the distributed data is to be distributed (Ramberg et al. – Claim 28 discloses the ADC device; Abstract discloses user input; Column 4, lines 60-67 disclose the user input from several devices that send data as well as distribution information such as bar code readers, RF readers, magnetic strip readers, speech recognizing devices et al.; Claim 28 discloses the router which sends backed up data to another ADC device; Claim 28 discloses only when client applications should receive the data; Claim 28 discloses the router; Column 11, lines 47-52 disclose the time for which to send the data from the server to the client), and

the server further comprises a data distributing unit that distributes the distributed data from the backup data to the destination and at the time based on the distribution information (Ramberg et al. – Claim 28 discloses the ADC device; Abstract discloses user input; Claim 28 discloses the router which sends backed up data to another ADC device; Claim 28 discloses only when client applications should receive the data; Claim 28 discloses the router which sends backed up data to another ADC device).

The motivation and obviousness arguments are the same as in Claim 1.

Examiner Notes

11. Examiner notices content of Figure 8 is not represented in the claims. Inclusion in independent form may help to overcome the cited prior art.

Conclusion

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 9:00am - 8:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-
273-8300.

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RGK

/Bunjob Jaroenchonwanit/
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